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Respondents.

REPORT AND RECOMMENDATION

I. Background

Petitioner is a native and citizen of China. On November 1, 2007, Petitioner was apprehended by Immigration and Customs Enforcement (“ICE”) officers when she attempted to enter the United States without inspection. Petitioner was placed in custody in Florence, Arizona, where she was detained until August 7, 2009. After Petitioner expressed a fear of persecution if she were removed to China, she was interviewed by an Asylum Pre-screening Officer (“APSO”). On November 14, 2007, the APSO found that Petitioner did not have a credible fear of persecution in China and ordered her removed from the United States under the expedited removal statute, 8 U.S.C. §

1 1225(b)(1)(B)(iii)(I). On November 27, 2007, an Immigration Judge (“IJ”) affirmed the
2 APSO’s determination.

3 On January 29, 2008, the IJ denied Petitioner’s motion to reopen for lack of
4 jurisdiction. On April 14, 2008, the Board of Immigration Appeals (“BIA”) dismissed
5 Petitioner’s appeal for lack of jurisdiction. On October 6, 2008, the United States Court
6 of Appeals for the Ninth Circuit dismissed Petitioner’s petition for review for lack of
7 jurisdiction. On October 30, 2008, the Ninth Circuit issued its mandate and on November
8 12, 2008, it denied Petitioner’s motion to recall the mandate.

9 Thereafter, Petitioner filed a Petition for Writ of Habeas Corpus which this Court
10 dismissed with leave to amend.¹ (dockets # 1, # 10) On March 3, 2009, Petitioner filed
11 an Amended Petition for Writ of Habeas Corpus asserting that, because she lacks travel
12 documents, China will not accept her if she is returned there. Relying on *Clark v.*
13 *Martinez*, 543 U.S. 371 (2005) (stating that when there is no reasonable likelihood that a
14 foreign government will accept an inadmissible alien’s return in the reasonably
15 foreseeable future, DHS may not detain the alien for more than the presumptively
16 reasonable period of six months), Petitioner claims that her lengthy detention pursuant to
17 8 U.S.C. § 1231 has become unlawful. Petitioner seeks immediate release from custody.

18 **II. Analysis**

19 As previously stated, Petitioner seeks release from custody on the ground that her
20 lengthy detention pursuant to 8 U.S.C. § 1231 (or 8 U.S.C. § 1225(b)(1)(B)(iii)(iv)) has
21 become unlawful. (docket # 12) After Petitioner filed her Amended Petition, on August
22 7, 2009, she was released under an Order of Supervision. (docket # 23, docket # 23-1)
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26 ¹ In her Original Complaint, Petitioner challenged her § 1225(e) expedited removal
27 order and also claimed that she is entitled to relief under the United Nations Convention
28 Against Torture. (docket # 1) Because the Court previously dismissed those claims, see
docket # 10, the Court will not revisit those claims to the extent they are asserted in the
Amended Petition.

1 Because Petitioner has been released from custody, she has been awarded the relief she
2 was seeking in her § 2241 petition.

3 “Article III of the Constitution limits federal ‘Judicial Power,’ that is, federal-court
4 jurisdiction, to ‘Cases’ and ‘Controversies.’” *U.S. Parole Commission v. Geraghty*, 445
5 U.S. 388, 395 (1980); *see also PUC v. FERC*, 100 F.3d 1451, 1458 (9th Cir. 1996). An
6 actual case or controversy must exist at all stages of judicial review. *Ortez v. Chandler*,
7 845 F.2d 573, 574-575 (5th Cir. 1988) (holding that no case or controversy existed where
8 movant, who challenged his bond determination, had been deported because the relief he
9 requested — reduction of his bond — could no longer be effected.) This limitation
10 restricts the jurisdiction of the federal courts to cases where there is a possible judicial
11 resolution. *Geraghty*, 445 U.S. at 395. This Court lacks jurisdiction to review moot
12 issues. *Gator.com Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125, 1128-29 (9th Cir. 2005)
13 (stating that “[i]t is an inexorable command of the United States Constitution that the
14 federal courts confine themselves to deciding actual cases and controversies.”). A moot
15 action is not subject to a judicial resolution. An action is moot when the parties lack a
16 legally cognizable interest in the outcome. The test for mootness is whether the court can
17 give a party any effective relief in the event that it decides the matter on the merits in their
18 favor. “That is, whether the court can ‘undo’ the effects of the alleged wrongdoing.”
19 *Reimers v. Oregon*, 863 F.2d 630, 632 (9th Cir.1989).

20
21 Here, Petitioner challenges her detention by DHS and seeks release from custody.
22 In view of Petitioner’s release from custody, the relief she requests — release from
23 custody — can no longer be effected. Therefore, no “case or controversy” remains and
24 the Petition is moot. *Picrin-Peron v. Rison*, 930 F.2d 773, 776 (9th Cir. 1991) (finding
25 that because petitioner only requested release from custody and had been released, the
26 court could provide no further relief and the petition was properly dismissed.); *American*
27 *Rivers v. National Marine Fisheries Services*, 126 F.3d 1118, 1123 (9th Cir. 1997) (stating
28 that “[a] claim is moot if it has lost its character as a present, live controversy.”)(citation

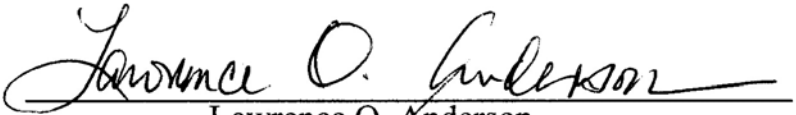
1 omitted); *Xie v. Schiltgen*, No. C 99-4150 VRW, 2001 WL 637409, * 1 (N.D. Cal., May
2 24, 2001).

3 Accordingly,

4 **IT IS HEREBY RECOMMENDED** Petitioner's Amended Petition for Writ of
5 Habeas Corpus (docket # 12) be **DENIED** as moot.

6 This recommendation is not an order that is immediately appealable to the Ninth
7 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of
8 Appellate Procedure, should not be filed until entry of the District Court's judgment. The
9 parties shall have ten days from the date of service of a copy of this recommendation
10 within which to file specific written objections with the Court. *See*, 28 U.S.C. §
11 636(b)(1); Rules 72, 6(a), 6(e), Federal Rules of Civil Procedure. Thereafter, the parties
12 have ten days within which to file a response to the objections. Failure timely to file
13 objections to the Magistrate Judge's Report and Recommendation may result in the
14 acceptance of the Report and Recommendation by the District Court without further
15 review. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Failure
16 timely to file objections to any factual determinations of the Magistrate Judge will be
17 considered a waiver of a party's right to appellate review of the findings of fact in an
18 order or judgment entered pursuant to the Magistrate Judge's recommendation. *See*, Rule
19 72, Federal Rules of Civil Procedure.
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21 DATED this 27th day of August, 2009.

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23 
24 Lawrence O. Anderson
25 United States Magistrate Judge
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